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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 MICHAEL ALEJANDRO
CASTILLO MURGA,

17 A Fugitive from the
18 Government of El
19 Salvador.

No. 2:24-mj-06387

UNITED STATES' OPPOSITION TO
FUGITIVE'S MOTION FOR BAIL;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: December 13, 2024
Time: 11:00 a.m.
Location: Courtroom of the
Hon. Sheri Pym

20
21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California and Assistant United States Attorneys John J. Lulejian and
24 Mitchell M. Suliman, hereby files its Opposition to Fugitive's Motion
25 for Bail. This opposition is based on the attached Memorandum of
26 Points and Authorities, the United States' Request for Detention, and
27 any evidence that may be presented at the December 13, 2024, hearing
28 on this matter.

1 For the reasons set forth in detail below, the government
2 respectfully requests the Court deny CASTILLO MURGA's motion and
3 continue to detain him pending extradition to El Salvador.

4
5 Dated: December 12, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 23, 2024, fugitive MICHAEL ALEJANDRO CASTILLO MURGA ("CASTILLO MURGA" or "the fugitive") initially appeared in this Court pursuant to a warrant based on a request from El Salvador for his arrest and extradition. As previously detailed, El Salvador seeks CASTILLO MURGA's extradition so that he may stand trial for stabbing Melvi Fernanda Najera Quezada, the mother of his child, to death in a desolate location on January 31, 2019, and abandoning his child, who was one-year, seven-months-old, to die in that location. At the initial appearance, this Court granted the United States' request for detention and set a status conference for November 13, 2024. (See Docket No. 10.) On November 13, 2024, the Court set a detention hearing on December 13, 2024, and ordered briefing. (See Docket No. 16.)

On December 9, 2024, CASTILLO MURGA filed a brief opposing his continued detention, in which he alleged that he is neither a flight risk or a danger to the community. (See Docket No. 17 at 8.) He also alleged that "special circumstances" exist, namely, a high likelihood of success against extradition, potential political persecution upon return to El Salvador, the necessity for active defense preparation, strong community and family ties in the United States, absence of any criminal history, humanitarian concerns, and anticipated delays in the extradition proceedings. (See id. at 9.)

As set forth in detail below, these assertions fail. Accordingly, the United States respectfully requests that the Court

1 deny CASTILLO MURGA's application and continue to detain him pending
2 extradition.

3 **II. ARGUMENT**

4 As detailed in the United States' request for detention,
5 "[t]here is a presumption against bail in an extradition case."
6 Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989). In
7 light of the strong presumption against bail, international fugitives
8 may not be released on bail unless they demonstrate that (1) they are
9 neither a flight risk nor a danger to the community, and (2) "special
10 circumstances" warrant their release. See, e.g., In re Extradition
11 of Antonowitz, 244 F. Supp. 3d 1066, 1068 (C.D. Cal. 2017). For the
12 reasons set forth below, CASTILLO MURGA has failed to prove that he
13 is not a flight risk, that he is not a danger to the community, and
14 that "special circumstances" exist that warrant bail.

15 **A. CASTILLO MURGA Should Be Detained Because He Poses a**
16 **Significant Risk of Flight and Danger to the Community**

17 1. CASTILLO MURGA Has the Incentive, Means, and Ability
18 to Flee

19 As the party seeking release, CASTILLO MURGA has the burden to
20 demonstrate that he is not a flight risk. He cannot do so.

21 The fact that CASTILLO MURGA has already sought to evade
22 prosecution in El Salvador is indicative of his risk of flight in the
23 United States. Cf. United States v. Botero, 604 F. Supp. 1028, 1035
24 (S.D. Fla. 1985) ("In the context of determining whether a defendant
25 poses a substantial risk of flight, this Court does not find any
26 meaningful distinction between a person who left the country when he
27 learned of pending charges and one who already outside the country
28 refuses to return to face these charges. The intent is the same—the

1 avoidance of prosecution.") (citing Jhirad v. Ferrandina, 536 F.2d
2 478, 483 (2d Cir. 1976)). CASTILLO MURGA's claim that "[e]ven with
3 the knowledge of potential legal proceedings against him in El
4 Salvador, he never attempted to hide or flee" (Docket No. 17 at 9),
5 is contradicted by the evidence in its extradition request.
6 According to El Salvador, immediately after allegedly killing Melvi
7 Fernanda Najera Quezada, CASTILLO MURGA allegedly traveled to his
8 grandmother's house covered in blood and confessed to the crime.¹
9 (See Docket No. 1 at ¶¶ 4(i)(i)-(iv).) Shortly thereafter, CASTILLO
10 MURGA's lawyer, allegedly told his client that he had to be "taken
11 out," and drove CASTILLO MURGA and his grandmother away from the
12 house.² (See id. at ¶¶ 4(i)(vi)-(vii).) According to the Salvadoran
13 Directorate of Migration Control, CASTILLO MURGA left El Salvador, on
14 foot, for Guatemala, using his United States passport at the San
15 Cristobal Border Checkpoint on or about February 2, 2019. (See id.
16 at ¶ 5.) In other words, within a day of allegedly confessing to and
17 killing Melvi Fernanda Najera Quezada, CASTILLO MURGA had fled El
18 Salvador.

19 Likewise, CASTILLO MURGA's claim that he respects the legal
20 process and "would have willingly appeared to present exculpatory
21 evidence" had he been properly notified of any charges (Docket No. 17
22 at 9), is belied by the fact that CASTILLO MURGA's alleged role in

23
24 ¹ Immediately after he allegedly killed Melvi Fernanda Najera
25 Quezada, CASTILLO MURGA allegedly sent a photograph of himself
26 covered with blood stains on his face and neck to his girlfriend.
27 (See id. at ¶ 4(f)(ii).) The Government of El Salvador included this
photograph in its extradition request. The United States has not
attached a copy of this photograph to this opposition due to its
graphic nature.

28 ² During and after the brief stay, CASTILLO MURGA's grandmother,
his lawyer, girlfriend, and other individuals allegedly destroyed
evidence of the crime. (See Docket No. 1 at ¶¶ 4(i)(vi)-(viii).)

1 the murder of Melvi Fernanda Najera Quezada and the abandonment of
2 her child to die has been broadly publicized since 2019.³ The
3 suggestion that CASTILLO MURGA did not return El Salvador because he
4 did not know that he was wanted to stand trial with others, including
5 his grandmother, for Melvi Fernanda Najera Quezada's murder is
6 absurd.

7 In addition to being a fugitive for five years, CASTILLO MURGA
8 has a strong incentive to flee, as he faces a significant prison
9 sentence - of potentially more than fifty years - if he is extradited
10 and convicted in El Salvador of the crimes for which his extradition
11 is sought. The Ninth Circuit has recognized that the greater a
12 defendant's sentencing exposure, the greater his incentive to flee.

13
14
15 ³ See, e.g.,
16 <https://www.elsalvador.com/noticias/nacional/feminicidio-fernanda-najera-homicidios-juzgados/1136557/2024/> (Apr. 16, 2024) (Spanish
17 language article describing CASTILLO MURGA's alleged criminal
18 conduct); <https://www.elsalvador.com/noticias/nacional/feminicidio-fernanda-najera-apaneca-fiscalia-general-elecciones-2024/1123162/2024/> (Feb. 14, 2024) (same);
19 <https://diariolahuella.com/decretan-detencion-a-sujeto-acusado-del-feminicidio-de-fernanda-najera/> (Apr. 23, 2023) (same);
20 <https://youtu.be/EQui3enIJNs?si=7dMvOCM5oyulw0U7> (Apr. 22, 2023)
21 (Spanish language video describing CASTILLO MURGA's alleged criminal
22 conduct); <https://www.elsalvador.com/noticias/nacional/audiencia-preliminar-feminicida-michael-alejandro-fernanda-najera/1023854/2022/>
23 (Dec. 12, 2022) (Spanish language article describing conviction of
24 CASTILLO MURGA's girlfriend for being accessory to femicide,
25 admission of CASTILLO MURGA's lawyer of covering up for his client in
26 exchange for conditional suspension of proceedings against him, and
27 acquittal of another individual for concealment);
28 <https://www.elsalvador.com/noticias/nacional/fernanda-najera-familia-retraso-proceso-judicial/993357/2022/> (Sept. 1, 2022) (Spanish
language article describing Salvadoran trial of defendants and belief
that CASTILLO MURGA fled to the United States);
<https://www.laprensagrafica.com/elsalvador/Quiero-justicia-para-mi-hija-aunque-a-ella-no-la-voy-a-recuperar-20211003-0046.html> (Oct. 4,
2021) (Spanish language article identifying CASTILLO MURGA as a
fugitive); <https://elplaneta.com/2019/06/06/internacional/fiscalia-salvadorena-acusa-hombre-por-el-asesinato/> (Jun. 6, 2019) (Spanish
language article describing charges against CASTILLO MURGA and
others).

1 See United States v. Townsend, 897 F.2d 989, 995 (9th Cir. 1990)
2 (affirming order of detention entered after arrest on complaint
3 where, among other factors, defendant faced even graver penalties
4 under indictment that was subsequently filed and, thus, had "an even
5 greater incentive to consider flight"). In the extradition context,
6 courts have been reluctant to release relators facing penalties far
7 less than CASTILLO MURGA. See, e.g., In re Extradition of Martinelli
8 Berrocal, 263 F. Supp. 3d 1280, 1305 (S.D. Fla. 2017) (fugitive's age
9 coupled with "a potential twenty-one-year sentence in Panama"
10 rendered fugitive "serious flight risk"); In re Extradition of Perez-
11 Cueva, No. 16-MJ-0233, 2016 WL 884877, at *3 (C.D. Cal. Mar. 7, 2016)
12 (seriousness of allegations against fugitive "militates against
13 release on bail"); In re Extradition of Shaw, No. 14-MC-81475, 2015
14 WL 521183, at *9 (S.D. Fla. Feb. 6, 2015) ("[T]he Defendant is facing
15 serious criminal sanctions in Thailand, which fact provides him with
16 a strong incentive to flee."); In re Extradition of Adame, Misc. H-
17 13-287, 2013 U.S. Dist. LEXIS 41682, at *7-8 (S.D. Tex. Mar. 25,
18 2013) (fugitive "has virtually no incentive to appear at his
19 extradition hearing, where, due to the Government's low burden of
20 proof, there is a significant risk that he will be formally
21 extradited to Mexico").

22 Accordingly, given these circumstances, no matter what bond
23 package he offers, CASTILLO MURGA poses an unacceptable flight risk.

24 2. CASTILLO MURGA Is a Danger to Community

25 In addition to being a flight risk, CASTILLO MURGA poses a
26 danger to the community if this Court were to release him.

27 CASTILLO MURGA's own claims as to why he is not a danger to the
28 community in the United States is neither consistent nor compelling.

1 The fact that he has no criminal record and allegedly paid his taxes
2 in no way detracts from the nature of the femicide offense of which
3 CASTILLO MURGA was charged. Those charges, which CASTILLO MURGA
4 admits are "serious" (Docket No. 17 at 9), renders him a danger to
5 the community both here in the United States and abroad if he were
6 released from custody. See, e.g., Perez-Cueva, 2016 WL 884877, at *3
7 (seriousness of allegations against fugitive "militates against
8 release on bail"). CASTILLO MURGA has been charged with the
9 unprovoked, cold-blooded murder of Melvi Fernanda Najera Quezada. As
10 such, CASTILLO MURGA poses a great danger to the community. This
11 dangerousness by itself renders bail inappropriate. CASTILLO MURGA
12 also has been charged with heartlessly abandoning his own child to
13 die, who was under the age of two, in the desolate area where he
14 killed the child's mother, by stabbing her to death. These
15 accusations demonstrate that CASTILLO MURGA poses a great danger to
16 the community and should not be released from custody.

17 **B. No "Special Circumstances" Exist that Justify Bail**

18 The special circumstances standard is "much stricter than the
19 'reasonable assurance' of appearance standard made applicable to
20 domestic criminal proceedings by the Bail Reform Act." In re
21 Extradition of Kin-Hong, 913 F. Supp. 50, 53 (D. Mass. 1996).
22 Notably, the "special circumstances" inquiry is separate from
23 considerations of danger to the community or risk of flight. See,
24 e.g., Perez-Cueva, 2016 WL 884877, at *2. "Special circumstances
25 must be extraordinary and not factors applicable to all defendants
26 facing extradition." In re Extradition of Mainero, 950 F. Supp. 290,
27 294 (S.D. Cal. 1996) (citing In re Extradition of Smyth, 976 F.2d
28 1535, 1535-36 (9th Cir. 1992)).

1 In the instant case, CASTILLO MURGA lists several factors that
2 he asserts satisfy his burden of demonstrating "special
3 circumstances." But as set forth below, none of these factors,
4 either individually or in the aggregate, satisfies the stringent
5 standard for permitting his release on bail.

6 1. CASTILLO MURGA Cannot Demonstrate Substantial
7 Likelihood of Success in the Extradition Proceedings

8 For likelihood of success to constitute a "special
9 circumstance," CASTILLO MURGA must establish that he has a "high
10 probability of success" on the particular claim. E.g., Salerno, 878
11 F.2d at 317 ("Examples of such [special] circumstances include the
12 raising of substantial claims upon which the appellant has a high
13 probability of success"); see also In re Extradition of
14 Beresford-Redman, 753 F. Supp. 2d 1078, 1087 (C.D. Cal. 2010); In re
15 Extradition of Santos, 473 F. Supp. 2d 1030, 1038 (C.D. Cal. 2006).
16 CASTILLO MURGA cannot demonstrate that he is substantially likely to
17 succeed on his claim that extradition is barred for the reasons
18 articulated in his Opposition to Extradition (Docket No. 18). In
19 addition to filing this document prematurely, CASTILLO MURGA ignores
20 the fact that the decision to surrender an American citizen to El
21 Salvador and the interplay of humanitarian concerns is reserved for
22 the Secretary of State, and not part of the Court's analysis.
23 Further, any constitutional challenges to a trial in El Salvador are
24 raised in that nation and not before this Court. Finally, CASTILLO
25 MURGA ignores the fact that, upon review, this Court already found
26 probable cause to issue a warrant for his arrest. (See Docket No.
27 2.) The United States will set forth additional details supporting a
28 finding of probable cause based on the information provided by El

1 Salvador in its Memorandum in Support of the Request for
2 Certification of Extradition, which will be filed on or before
3 January 17, 2025.

4 For these reasons and the ones set forth below, CASTILLO MURGA
5 fails to prove that he has a high probability of succeeding on his
6 claim that his extradition is not warranted.

7 2. The Possibility of Political Persecution Upon
8 Extradition is Not a "Special Circumstance"

9 Without providing supporting evidence or legal authority,
10 CASTILLO MURGA asks this Court to find that the mere possibility of
11 political persecution following extradition is a "special
12 circumstance." (See Docket No. 17 at 11.) By asking the Court to
13 make such a finding, CASTILLO MURGA asks the Court to exceed its
14 limited role in the extradition process and, moreover, would conflict
15 with well-settled precedent reserving consideration of such claims
16 for the Secretary of State.

17 Extradition is a two-step process in which a court first
18 determines whether "there is probable cause to extradite" based on
19 the relevant legal requirements, and then the Secretary of State
20 "decides whether to surrender the individual to the requesting
21 state." Santos v. Thomas, 830 F.3d 987, 993 (9th Cir. 2016) (en
22 banc). This division is reflected in the statutory framework for
23 extradition, wherein only the Secretary of State, and not the
24 judiciary, may make the discretionary decision of whether the
25 fugitive "may . . . be delivered" to the requesting country.
26 18 U.S.C. § 3186; see 18 U.S.C. § 3184.

27 Such discretion is properly placed in the hands of the Secretary
28 given "the Executive's powers to conduct foreign affairs," which

1 include the ability to "make confidential diplomatic inquiries and
2 receive confidential diplomatic assurances about the treatment of an
3 extraditee." Trinidad y Garcia v. Thomas, 683 F.3d 952, 961 (2012)
4 (en banc) (per curiam) (Thomas, J., concurring). Questions about the
5 treatment a fugitive may face upon his return to the requesting
6 country may be considered only by the Secretary in making the
7 discretionary decision regarding surrender. See, e.g., United States
8 v. Kin-Hong, 110 F.3d 103, 108 (1st Cir. 1997) (following the court's
9 certification decision, "[i]t is then within the Secretary of State's
10 sole discretion to determine whether or not the relator should
11 actually be extradited" based on, inter alia, "humanitarian and
12 foreign policy considerations"); cf. Prasoprat v. Benov, 421 F.3d
13 1009, 1016 (9th Cir. 2005) ("The magistrate judge has no
14 discretionary decision to make.") (internal quotation marks and
15 citation omitted).

16 Such questions are not yet ripe for review by a court reviewing
17 an extradition certification, as the Secretary of State has not yet
18 decided whether to surrender the fugitive to the requesting country.
19 See, e.g., Meza v. U.S. Atty. Gen., 693 F.3d 1350, 1356 (11th Cir.
20 2012) ("There is nothing in the record to suggest that the Secretary
21 has decided whether to surrender [the fugitive]. [The fugitive's]
22 claim about torture is not ripe."); Hoxha v. Levi,
23 465 F.3d 554, 565 (3d Cir. 2006) (declining to address Albanian
24 fugitive's claim that he would be tortured and possibly killed by
25 Albanian authorities on ripeness grounds). Indeed, a decision by the
26 Secretary not to surrender the fugitive would moot any concerns about
27 his return to the requesting country.

1 Regardless, the Supreme Court, the Ninth Circuit, and myriad
2 other courts have established that, under the rule of non-inquiry,
3 questions concerning the treatment a fugitive may face in the
4 requesting country lie beyond the limited purview of the judiciary in
5 extradition matters. Over a century ago, the Supreme Court explained
6 that U.S. courts "are bound by the existence of an extradition treaty
7 to assume that the trial will be fair." Glucksman v. Henkel, 221
8 U.S. 508, 512 (1911). More recently, in Munaf v. Geren, the Supreme
9 Court re-affirmed that it is appropriate for the Secretary of State
10 alone to assess practices in the requesting country and the
11 likelihood of an individual being tortured after his transfer there.
12 553 U.S. 674, 700-01 (2008) (citing Neely v. Henkel,
13 180 U.S. 109, 123 (1901)). In that case, which involved a due
14 process challenge to the transfer of U.S. citizens detained by U.S.
15 military officials within Iraq to Iraqi officials for prosecution,
16 the Court specifically rejected the detainees' argument that
17 principles of non-inquiry were overcome by their allegations that
18 they would likely be tortured if transferred to Iraq. Id. at 700.
19 "Such allegations are of course matters of serious concern, but . . .
20 that concern is to be addressed by the political branches, not the
21 judiciary." Id.

22 The Ninth Circuit, like other courts, has "long adhered to the
23 rule of non-inquiry," concluding that "it is the role of the
24 Secretary of State, not the courts, to determine whether extradition
25 should be denied on humanitarian grounds or on account of the
26 treatment that the fugitive is likely to receive upon his return to
27
28

1 the requesting state.” Prasoprat, 421 F.3d at 1016.⁴ Indeed, the
2 Ninth Circuit unequivocally held in Prasoprat that a “magistrate
3 judge does not have any discretion” to deny extradition on
4 humanitarian grounds. Id. Similarly, a claim that humanitarian
5 concerns bar extradition “is not cognizable on habeas corpus.”
6 Prasoprat v. Benov, 294 F. Supp. 2d 1165, 1171 (C.D. Cal. 2003),
7 aff’d, 421 F.3d 1009; see also, e.g., Trinidad, 683 F.3d at 956-57,
8 (rule of non-inquiry limits “the scope of habeas review”) (emphasis
9 omitted). Rather, once an extradition has been certified, “it is the
10 Secretary of State, representing the executive branch, who determines
11 whether to surrender the fugitive.” Prasoprat, 421 F.3d at 1016.

12 Accordingly, this Court should not consider CASTILLO MURGA’s
13 alleged humanitarian claims, even in the context of bail, as it is
14 beyond its purview.

16 ⁴ See also, e.g., Quinn v. Robinson, 783 F.2d 776, 789-90 (9th
17 Cir. 1986) (Secretary of State has “sole discretion . . . to refuse
18 extradition on humanitarian grounds because of the procedures or
19 treatment that await a surrendered fugitive”); Barapind v. Enomoto,
20 360 F.3d 1061, 1077 (9th Cir. 2004) (“The government of the United
21 States, through the Secretary of State, should determine . . .
22 whether diplomatic and treaty relations are being carried out and
23 respected in such a way that it is safe to surrender an alleged
24 criminal under a treaty.”) (quoting In re Lincoln, 228 F. 70, 74
25 (E.D.N.Y. 1915)), on reh’g en banc, 400 F.3d 744 (9th Cir. 2005);
26 Noeller v. Wojdylo, 922 F.3d 797, 808 (7th Cir. 2019) (“Under the
27 settled rule of non-inquiry, the executive branch has sole authority
28 to consider such humanitarian considerations in deciding on
extradition requests. . . . [It] is intended to prevent extradition
courts from engaging in improper judgments about other countries’ law
enforcement and judicial procedures. More important, the rule serves
interests of international comity by relegating to political actors
the sensitive foreign policy judgments that are often involved in the
question of whether to refuse an extradition request.”) (internal
quotation marks and citation omitted); Escobedo v. United States, 623
F.2d 1098, 1107 (5th Cir. 1980) (“[T]he degree of risk to [the
fugitive’s] life from extradition is an issue that properly falls
within the exclusive purview of the executive branch.”).

3. Defense Preparation is Not a "Special Circumstance"

A mere general intent to investigate, contest extradition, and appeal is not unusual or sufficient. See, e.g., Smyth, 976 F.2d at 1535-36; Martinelli, 263 F. Supp. 3d 1298 ("[W]e do not find here that the length of the anticipated extradition process in this case, real or imagined, warrants a finding of special circumstances sufficient to grant bail contrary to the presumption of detention."); In re Extradition of Tehrani, No. SA 16-MJ-250-RAO, 2016 WL 3456971, at *2 (C.D. Cal. June 17, 2016) ("The Ninth Circuit has stated that issues common to all incarcerated defendants do not qualify as 'special circumstances.'") See Smyth, 976 F.2d at 1535-36 ("The need to consult with counsel, gather evidence and confer with witnesses, although important, is not extraordinary; all incarcerated defendants need to do these things.").

In his motion, CASTILLO MURGA claims that "[h]is detention hampers his ability to gather evidence and secure testimony that could demonstrate his innocence and contest the extradition." (Docket No. 17 at 11.) CASTILLO MURGA does not describe why his preparation for his defense is special or unique compared to all other defendants in similar circumstances. Nor does CASTILLO MURGA explain how any evidence he gathers would be admissible.⁵

⁵ It is well established that a fugitive may not introduce evidence that contradicts the evidence submitted by the requesting country "[b]ecause extradition courts do not weigh conflicting evidence in making their probable cause determinations." Barapind v. Enomoto, 400 F.3d 744, 749 (9th Cir. 2005) (en banc) (internal quotation marks and citation omitted); see also, e.g., Charlton v. Kelly, 229 U.S. 447, 461-62 (1913) (upholding magistrate judge's decision to exclude "witnesses produced to contradict the testimony for the prosecution" because such an "objection . . . should be taken before or at the time of his trial for the crime, and heard by the court having jurisdiction of the crime"); Santos, 830 F.3d at 993 (a

(footnote cont'd on next page)

1 Accordingly, he has failed to demonstrate a "special
2 circumstance" based on his detention.

3 4. CASTILLO MURGA's Character and Support in the
4 Community are Not "Special Circumstances"

5 To the extent CASTILLO MURGA suggests that his character and
6 support in the community are "special circumstances," he is
7 incorrect. Instead, these factors are more appropriately considered
8 when conducting the independent flight risk analysis. See Nacif-
9 Borge, 829 F. Supp. at 1220 ("More often, the character and
10 background of a person subject to extradition are considered in
11 regard to risk of flight and danger to the community rather than as a
12 special circumstance."); see also In re Extradition of Sidali, 868 F.
13 Supp. 656 (D.N.J. 1994) (rejecting "extraordinary character" based on
14 employment, family ties, no prior record, and community respect as
15 special circumstance); In re Extradition of Valles, 36 F. Supp. 2d
16 1228, 1231 (S.D. Cal. 1998) (fugitive's past conduct and community
17 ties used to assess flight risk). Further, letters of support
18 vouching for a defendant's trustworthiness do not qualify as a
19 special circumstance. See Beresford-Redman, 753 F. Supp. 2d at 1089.
20 Also, the fugitive's alleged compliance with the terms of release -
21 something expected of every person under supervision by a court - is
22 not a "special circumstance." See United States v. Williams, 611
23 F.2d 914, 915 (1st Cir. 1979) (fugitive's "arguable acceptability as
24 a tolerable bail risk" is not a special circumstance).

25 CASTILLO MURGA's suggestion that his support in the community is
26 _____
27 fugitive may not "produce witnesses whose testimony contradicts
28 evidence already offered by the government"). In other words, the
fugitive cannot offer evidence that would lead to an evidentiary
dispute. See Hooker v. Klein, 573 F.2d 1360, 1368 (9th Cir. 1978);
Santos, 830 F.3d at 992; Barapind, 400 F.3d at 749-50.

1 a "special circumstance," fails because courts, including this one,
2 have rejected such an assertion. See, e.g., Beresford-Redman, 753 F.
3 Supp. 2d at 1089-90 (denying bail, despite strong family and
4 community ties in United States, finding that letters in support from
5 friends, family, and business associates are not a special
6 circumstance justifying bail); Azizi, 2014 WL 1995083, at *9 (denying
7 bail despite individual having no criminal record, the alleged
8 offenses were non-violent, and strong ties to community); Nacif-
9 Borge, 829 F. Supp. at 1220 (finding that eighty-five letters in
10 support, attesting to fugitive's character, did not constitute
11 special circumstance justifying bail); In re Extradition of Sutton,
12 898 F. Supp. 691, 696 (E.D. Mo. 1995) ("[A]n extradition fugitive's
13 character and background . . . are not by themselves a special
14 circumstance sufficient to require release on bail in an
15 international extradition case.").

16 5. CASTILLO MURGA's Alleged Lack of Danger to the
17 Community is Not a "Special Circumstance"

18 CASTILLO MURGA claims that his alleged lack of a criminal
19 history and lack of danger to the community amount to a "special
20 circumstance." (See Docket No. 17 at 12.) However, this is an
21 independent condition precedent for releasing a fugitive on bail, and
22 does not factor into the "special circumstances" inquiry. See, e.g.,
23 Santos, 473 F. Supp. 2d at 1035-36 ("The party seeking release on
24 bail in an international extradition case also must demonstrate that
25 there is no risk he will fail to appear for further extradition
26 proceedings and that he is not a danger to the community, but those
27 factors are not special circumstances which alone justify release on
28 bail"); In re Extradition of Russell, 805 F.2d 1215, 1216 (5th Cir.

1 1986) (“[b]eing a tolerable bail risk is not in and of itself a
2 special circumstance”); Williams, 611 F.2d at 915 (“even applicant’s
3 arguable acceptability as a tolerable bail risk” is not “special
4 circumstance”); cf., e.g., Salerno, 878 F.2d at 317-18 (lack of
5 flight risk “is not a criteria for release in an extradition case”);
6 United States v. Leitner, 784 F.2d 159, 161 (2d Cir. 1986) (“Even a
7 low risk of flight” is not a circumstance sufficiently “unique” to
8 constitute a special circumstance.”). In light of the facts of this
9 case, CASTILLO MURGA does pose a danger to the community.

10 6. CASTILLO MURGA’s Humanitarian Factors are Not “Special
11 Circumstances”

12 CASTILLO MURGA asserts that he should be released on bail
13 because “[t]he detention has adversely affected his mental health and
14 personal development . . . [and] [b]eing separated from his family
15 imposes significant emotional and financial hardship on both him and
16 his loved ones.” (Docket No. 17 at 13.) While the United States is
17 sympathetic, the fact remains that the person detained and family
18 members experience “hardship” in almost every case where one person
19 is detained. As one court noted,

20 [T]hat possibility [of unwelcome financial strain], however
21 unfortunate, is present in almost every case where a
22 defendant with family faces detention pending adjudication.
23 Accordingly, the fact that the defendant’s family depends
24 on him for financial and emotional support is not a special
25 circumstance weighing in favor of release.

26 In re Extradition of Drumm, 150 F. Supp. 3d 92, 99 (D. Mass.
27 2015); see Antonowicz, 244 F. Supp. 3d at 1072 (“The Court does
28 not intend to understate the financial and emotional burdens

1 that detention causes, but those burdens are present in almost
2 all cases and therefore do not constitute a 'special
3 circumstance.'" (internal quotation and citation omitted);
4 Beresford-Redman, 753 F. Supp. 2d at 1087 ("Emotional hardship
5 for the family of a fugitive facing extradition is present in
6 almost all cases and therefore does not constitute a 'special
7 circumstance.'" (internal quotation and citation omitted); In
8 re Extradition of Mahabir, 858 F. Supp. 504, 508 (D. Md. 1994)
9 ("A defendant's incarceration regularly creates difficulties for
10 him and his family."); see also Smyth, 976 F.2d at 1535-36
11 (special circumstances must be "extraordinary" and not factors
12 applicable to all fugitives facing extradition).

13 Accordingly, any hardship suffered as a result of CASTILLO
14 MURGA's detention during this extradition proceeding cannot justify
15 his release.

16 7. The Possibility of Delayed Extradition Proceedings is
17 Not a "Special Circumstance"

18 The Ninth Circuit has recognized that "'unusual delay in the
19 appeal process' can be a 'special circumstance' that will justify
20 bail" See In re Extradition of Kirby,
21 106 F.3d 855, 863 (9th Cir. 1996) (quoting Salerno, 878 F.2d at 317).
22 However, the delay must be something beyond what are simply "factors
23 applicable to all defendants facing extradition." Mainero, 950 F.
24 Supp. at 294. Further, any delay caused by or attributed to the
25 fugitive is not a "special circumstance." See, e.g., Kin-Hong, 83
26 F.3d at 525 (rejecting bail claim where "[t]o the extent that there
27 has been some delay, [the petitioner] himself is partly
28 responsible"); In re Extradition of Heilbronn,

1 773 F. Supp. 1576, 1581 (W.D. Mich. 1991) (court unsympathetic to
2 petitioner who requested several delays); United States ex rel.
3 McNamara v. Henkel, 46 F.2d 84 (S.D.N.Y. 1912) (delay justifies bail
4 "only where the hearing date comes and the complainant is not ready
5 to proceed"). Regarding anticipated delay, [the fugitive] has not
6 shown circumstances that are different from 'factors applicable to
7 all defendants facing extradition.'" (citations omitted).

8 In his opposition, CASTILLO MURGA claims that the "anticipated
9 delays in the extradition proceedings contribute to the special
10 circumstances." (Docket No. 17 at 13.) However, CASTILLO MURGA does
11 not elaborate on reasons why his extradition matter will be unusually
12 lengthy, nor is the United States aware of any such reasons. See
13 Kirby, 106 F.3d at 863; see also Santos, 830 F.3d at 990 ("Once the
14 warrant is issued, the district court, which may include a magistrate
15 judge, conducts a hearing to determine whether there is evidence
16 sufficient to sustain the charge under the provisions of the proper
17 treaty or convention, or, in other words, whether there is probable
18 cause.") (internal quotation and citations omitted). In other words,
19 CASTILLO MURGA does not describe why there would be any delays, other
20 than those generated by litigation decisions entirely within his
21 control, such as seeking a writ of habeas corpus or appeals thereof.
22 See Smyth, 976 F.2d at 1535-36. Accordingly, he has failed to
23 demonstrate a special circumstance based on alleged delay.

24 In short, CASTILLO MURGA fails to sufficiently establish a
25 single factor that would warrant "special circumstances." Even
26 considering the factors that he alludes to together in a favorable
27 light, CASTILLO MURGA falls well short of carrying his burden of
28 establishing "special circumstances" for the purposes of overcoming

1 the strong presumption against bail.

2 **III. CONCLUSION**

3 For the foregoing reasons, the government respectfully requests
4 that this Court deny CASTILLO MURGA's application and continue to
5 detain him pending extradition. If, however, the Court is inclined
6 to place CASTILLO MURGA on bond, the United States respectfully
7 requests the opportunity to advocate for the conditions of his bond.

8
9 Dated: December 12, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for United States of America, certifies that this brief contains 4,860 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 12, 2024

/s/ John J. Lulejian

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